



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

KIRT REPP DC
PO BOX 9973
THE WOODLANDS TX 77387

Respondent Name

LIBERTY INSURANCE CORP

MFDR Tracking Number

M4-13-2623-01

Carrier's Austin Representative

Box Number 01

MFDR Date Received

JUNE 11, 2013

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "if the patient meets the definition of 'Chronic Pain' as per the ODG 'Pain' chapter as a direct result of the compensable work-related injuries, then any 'Recommended' treatment the ODG 'Pain' chapter supports does not require preauthorization and must be reimbursed."

Amount in Dispute: \$4,770.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The bill and documentation attached to the medical dispute have been re-reviewed and no additional adjustment has been made."

Response Submitted By: Liberty Mutual Insurance

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 2, 2012	CPT Code 99202	\$250.00	\$0.00
	CPT Code 95860	\$575.00	\$0.00
	CPT Code 95934-50	\$450.00	\$0.00
	CPT Code 95903-59 (X4)	\$555.00/each	\$0.00
	CPT Code 95904-59 (X3)	\$425.00/each	\$0.00
TOTAL		\$4,770.00	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §137.100, effective January 18, 2007, sets out the use of the treatment guidelines.
3. 28 Texas Administrative Code §133.250, effective May 2, 2006, sets out the timeframe for filing a request for reconsideration of payment.
4. 28 Texas Administrative Code §134.203, effective March 1, 2008, 33 *Texas Register* 364, sets the reimbursement guidelines for the disputed service.
5. 22 Texas Administrative Code §75, effective December 24, 2009, 34 *Texas Register* 9208, sets out the scope of practice for chiropractors.
6. District Court of Travis County, 250th Judicial District No. D-1-N-GN-06-003451, Honorable Stephen Yelenosky, Judge Presiding, Order on cross-motions for partial summary judgment dated November 24, 2009.
7. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Opinion dated April 5, 2012.
8. Texas Court of Appeals, Third District at Austin, NO. 03-10-00673-CV, Mandate dated August 8, 2013.
9. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits

- X484-According to the Texas Division of Workers Compensation's rules effective May 1, 2007, all medical treatment provided to workers compensation patients in the state of Texas must follow the Official Disability Guidelines (ODG). The services provided are outside the ODG guidelines and no preauthorization was requested
- X457-No significant identifiable evaluation and management service has been documented.

Litigation Background for Needle EMG and MUA

Portions of the Texas Board of Chiropractic Examiners rules of practice were challenged by the Texas Medical Association and the Texas Medical Board in 2009. At issue was whether 22 Texas Administrative Code §75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) were within the scope of chiropractic practice in Texas. Specifically, the parties sought judgment on whether rules allowing Chiropractors to perform needle electromyography (EMG) and manipulation under anesthesia (MUA) were valid. On November 24, 2009, the 345th District Court issued a judgment in which presiding judge Honorable Stephen Yelenosky concluded that needle EMG and MUA exceeded the statutory scope of chiropractic practice in Texas. The Texas Board of Chiropractic Examiners appealed the district court's judgment to the Texas Court of Appeals, Third District. The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice. The Chiropractic Board exhausted its appeals and on August 8, 2013, the mandate affirming the district court's judgment was issued. The mandate states "...we affirm the remainder of the district court's judgment that subparts 75.17(a)(3), (c)(2)(D), (c)(3)(A), and (e)(2)(O) of the Texas Board of Chiropractic Examiners' scope-of-practice rule are void." In accordance with the Texas Court of Appeals opinion, the final mandate, and the scope of chiropractic practice requirement in 28 Texas Administrative Code §134.203(a)(6), needle EMG and MUA services may not be reimbursed.

Issues

1. Is the rendering provider eligible to perform needle electromyography?
2. Does a preauthorization issue exist?
3. Does the documentation support billing of CPT code 99202?

Findings

1. CPT code 95860 is defined as "Needle electromyography; 1 extremity with or without related paraspinal areas." According to the medical documentation found, this service was performed by Kirt Repp, D.C. (Doctor of Chiropractic). The Texas Court of Appeals in *Tex. Bd. Of Chiropractic Examiners v. Tex. Med. Ass'n.*, 375 S.W.3d 464 (Tex. App. – Austin, 2012, pet. den.) issued an opinion affirming the district court's judgment, and concluding that needle EMG and MUA services are not within the chiropractic scope-of-practice of chiropractors. 28 Texas Administrative Code §134.203(a)(6) states "Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act." The division finds that disputed service code 95860 is not within the scope of chiropractic practice because it is an electro-diagnostic test that involves the insertion of a needle into the patient. Therefore, no reimbursement can be recommended for CPT code 95860 pursuant to 28 Texas Administrative Code §134.203(a)(6).
2. According to the explanation of benefits, the respondent denied reimbursement for the disputed services

based upon reason code "X484."

28 Texas Administrative Code §134.600(p)(12) requires preauthorization for "treatments and services that exceed or are not addressed by the Commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the carrier."

The requestor billed nerve conduction studies for the diagnoses 846.9-Unspecified site of sacroiliac region sprain and strain, and 844.9-Unspecified site of knee and leg sprain and strain.

According to the Low Back and Knee and Leg Chapters of the Official Disability Guidelines (ODG), nerve conduction studies are not a recommended treatment for the diagnoses 846.9 and 844.09; therefore, the disputed nerve conduction studies required preauthorization. As a result, a preauthorization issue exists and reimbursement is not recommended.

3. CPT code 99202 is defined as "Office or other outpatient visit for the evaluation and management of a new patient, which requires these 3 key components: An expanded problem focused history; An expanded problem focused examination; Straightforward medical decision making. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Typically, 20 minutes are spent face-to-face with the patient and/or family."

The respondent denied reimbursement for the office visit based upon reason code "X457." A review of the submitted documentation finds the requestor did not support billing of CPT code 99202; therefore, reimbursement is not recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that reimbursement is due for the specified services. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

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Signature	Medical Fee Dispute Resolution Officer	Date

9/26/2013

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.